IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 17333 of 2007(L)

PETITIONER:

PREMADASAN,
MOOPATH THODUKATTIL HOUSE, EZHUVANTHALA NELLAYA,
PALAKKAD-679 335.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.ANOOP JOSEPH
SRI.ANOOP.V.NAIR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. ICICI BANK LTD., REPRESENTED BY
ITS OFFICER, MANAGER (COLLECTION)-BABU SREEJITH,
S/O. C.V.MUKUNDAN, AGED 29 YEARS, HAVING OFFICE
AT: CHENNAI MAIN BRANCH, P.B.NO.1610, DARE HOUSE,
ANNEXE 44, MOORE STREET, CHENNAI-600 001.

BY G.P. SRI. M.S. BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO.17333 OF 2007-L

Dated this the 12th day of June, 2007

JUDGMENT

Does the decision of the Full Bench in **Meenakshi Sathish v. Southern Petrochemical Industries** (2007 (1) KLT 890 (FB)) require reconsideration for the reason that it conflicts with the decision of the Supreme Court in **Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd.** (2006 (2) KLT 525 (SC)? This is the short question that is raised for consideration.

2. On facts, there is no dispute. If the Full Bench decision holds the field, the petitioner's prayer to quash the cognizance taken by the Metropolitan Magistrate's Court No.III, George Town, Chennai, has got to be rejected holding that the cause of action - cognizance taken by the court, did not occur within the jurisdiction of this Court.

3. The learned counsel for the petitioner relies on the

observations of the Supreme Court in paras-28 to 33 in **Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd.** (2006 (2) KLT 525 (SC). Particular reliance is placed on the summarisation of the law in para-28 which I extract below:

> "28. We have referred to the scope of jurisdiction under Arts.226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of subordinate court has been passed, would have the jurisdiction to entertain an application under Art.227 of the Constitution of India unless it is established that the earlier cause of action arose within the jurisdiction thereof."
>
> (emphasis supplied)

4. The learned counsel for the petitioner submits that the Full Bench has not considered the scope and ambit of the

expression "unless it is established that the earlier cause of action arose within the jurisdiction thereof" in detail in the judgment in **Meenakshi Sathish v. Southern Petrochemical Industries** (2007 (1) KLT 890 (FB)). I am unable to accept this contention. In para-10 of **Meenakshi Sathish v. Southern Petrochemical Industries** (2007 (1) KLT 890 (FB)), the Full Bench has considered the nature of the cause of action in a writ of certiorari or prohibition like the instant one where the prayer is to quash the proceedings initiated by a court. The following observations in para-10 , according to me, are of crucial relevance:

> "10. But, the cause of action which must arise in Kerala for issuing the writs of certiorari or prohibition, must relate to the commissions or omissions of an inferior court or Tribunal amenable to the writ jurisdiction of this Court and not that of a private party. This Court cannot judicially review the actions of the 1st respondent. It may file any complaint before any court. It may do it rightly or wrongly. The 1st respondent being a private party not

amenable to the writ jurisdiction of this Court, we cannot judicially review its actions. But, the point to be decided is whether we can judicially review the action of the Magistrate in taking cognizance under S.190(1)(a) read with S.200 of the Cr.P.C. of the offence alleged against the petitioner and issuing process under S.204. The entire cause of action, as far as the action of the learned Magistrate is concerned, arose in Coimbatore, outside the jurisdiction of this Court. So, even if the complainant has wrongly filed a complaint before the Coimbatore court, the action of taking cognizance and issuance of the process took place outside the jurisdiction of this Court. Therefore, we have no doubt in our mind that the reliefs sought in this Writ Petition cannot be granted by this Court."

(emphasis supplied)

5. Article 226(2) of the Constitution reads as follows:

> "226. **Power of High Courts to issue certain writs:**
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> (1) x x x x x x x x x x x x x
>
> (2) The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."
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> (emphasis supplied)

6. The crucial question is, where did the cause of action arise? The observations in para-10 clearly show that the cause of action for a writ petition like the instant one arises only when the court takes cognizance and issues process. The earlier cause of action referred in para-28 of the Supreme Court judgment cannot obviously, in these circumstances, refer to the cause of

action of a private party initiating proceedings.

7. The learned counsel for the petitioner submits that the Supreme Court in paras-29 to 33 of the decision in **Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd.** (2006 (2) KLT 525 (SC) has clearly tried to ascertain whether any part of the cause of action had arisen within the jurisdiction of the High Court of Kerala and that must suggest that if any part of the cause of action for filing the complaint had arisen within the jurisdiction of this Court, the conclusion of the Supreme Court would have been different. I am unable to accept this contention also. The Supreme Court, after clearly holding that only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have jurisdiction to entertain the application had proceeded to consider whether the court in Calcutta (Chief Judicial Magistrate, Birbhum) had jurisdiction to consider the matter. Obviously, if the court at Birbhum, Calcutta, had no jurisdiction at all, the conclusion may have been different. The Supreme Court may have then held that the relief claimed by the petitioner – to quash the

proceedings there, can be granted by the Supreme Court under Art.136 of the Constitution. That and that alone is signified from the endeavour made by the Supreme Court in paras-30 to 33 to ascertain whether any part of the cause of action had arisen within the jurisdiction of the High Court of Calcutta. At any rate, I am not satisfied that this is a fit case where the question deserves any further and detailed consideration. Jurisdiction under Art.226 of the Constitution, I am satisfied, does not deserve to be invoked in the instant case where the proper forum to challenge the cognizance taken is the High Court of Tamil Nadu.

8. This writ petition is, in these circumstances, dismissed.

(R. BASANT, JUDGE)

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